



BILLING CODE 3410-34-P

## **DEPARTMENT OF AGRICULTURE**

### **Animal and Plant Health Inspection Service**

**[Docket No. APHIS-2008-0119]**

#### **Implementation of Revised Lacey Act Provisions**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Food, Conservation, and Energy Act of 2008 amended the Lacey Act to provide, among other things, that importers submit a declaration at the time of importation for certain plants and plant products. Enforcement of the declaration requirement began on April 1, 2009, and products requiring a declaration are being phased-in. The purpose of this notice is to inform the public of a change in the date of implementation for Phase VI of the enforcement schedule.

**DATES:** Implementation of Phase VI of the Lacey Act enforcement schedule will begin October 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Ms. Dorothy Wayson, National Policy Manager, Lacey Act Program, Compliance and Environmental Coordination Branch, PPQ, APHIS, 4700 River Road Unit 150, Riverdale, MD 20737; (301) 851-2036.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Lacey Act (16 U.S.C. 3371 *et seq.*), first enacted in 1900 and significantly amended in 1981, is the United States' oldest wildlife protection statute. The Act combats trafficking in illegally taken wildlife, fish, or plants. The Food, Conservation, and Energy Act of 2008, effective May 22, 2008, amended the Lacey Act by expanding its protection to a broader range

of plants and plant products (Section 8204, Prevention of Illegal Logging Practices). The Lacey Act now makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken, possessed, transported, or sold in violation of any law of the United States or an Indian Tribe, or in violation of any State or foreign law that protects plants or that regulates certain specified plant-related activities. The Lacey Act also now makes it unlawful to make or submit any false record, account, or label for, or any false identification of, any plant.

In addition, Section 3 of the Lacey Act, as amended, makes it unlawful, beginning December 15, 2008, to import certain plants, including plant products, without an import declaration. The declaration must contain the scientific name of the plant, value of the importation, quantity of the plant, and name of the country from which the plant was harvested. For paper and paperboard products containing recycled content, the declaration also must include the average percent of recycled content without regard for species or country of harvest. The plant import declaration requirement does not apply to plants used exclusively as packaging material to support, protect, or carry another item, unless the packaging material itself is the item being imported. Currently, enforcement of the declaration requirement is being phased in, as described in three notices we published in the *Federal Register*,<sup>1</sup> the first on February 3, 2009 (74 FR 5911-5913, Docket No. APHIS-2008-0119), the second on September 2, 2009 (74 FR 45415-45418, Docket No. APHIS-2008-0119), and the third on February 6, 2015 (80 FR 6681-6683, Docket No. APHIS-2008-0119).

In our February 2009 notice, we committed to providing affected individuals and industry with at least 6 months' notice for any products that would be added to the phase-in schedule. The phased-in enforcement schedule began April 1, 2009. The most recent phase (V) began on August 6, 2015. The enforcement schedule is available on the Animal and Plant Health

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<sup>1</sup> To view the notices and the comments we received, go to <http://www.regulations.gov>, and enter APHIS-2008-0119 in the Search field.

Inspection Service (APHIS) website at

[https://www.aphis.usda.gov/aphis/ourfocus/planthealth/import-information/SA\\_Lacey\\_Act](https://www.aphis.usda.gov/aphis/ourfocus/planthealth/import-information/SA_Lacey_Act). We continue to consider the applicability of the declaration requirement to products not included in the current phase-in schedule.

On March 31, 2020, we published a notice in the *Federal Register* (85 FR 17849-17850, Docket No. APHIS-2008-0119) announcing Phase VI of the enforcement schedule, which would have begun on October 1, 2020. We solicited comments concerning our proposal until July 1, 2020. We received 31 comments by that date. They were from industry associations, conservation organizations, importers, exporters, and representatives of foreign governments.

Several commenters were concerned that adding products under Harmonized Tariff Code 4415, which includes cases, boxes, crates, drums, containers, pallets, and box-pallets, and other solid wood packaging materials, would result in unnecessary burden and disruptions to international trade if the declaration requirement was enforced for these packaging materials.

The Act specifies that the plant import declaration requirement does not apply to plants used exclusively as packaging material to support, protect, or carry another item, unless the packaging material itself is the item being imported (§ 3372(f)(3)). APHIS will only require a declaration for new products in Harmonized Tariff Code 4415 that are formally entering the United States. The declaration requirement will not apply to used, recycled, or reclaimed pallets or to pallets, empty or under load, that are used to carry goods imported into the United States.

Some commenters expressed concern about the addition of essential oils in Harmonized Tariff Code 3301.29.5150 – essential oils of “other.” These commenters stated that it was unclear what was included under “other” and that there could be attempts to inaccurately classify products under different codes to avoid the plant import declaration requirement.

We agree with the commenters that this code may not provide sufficient specificity and could result in both deliberate and unintentional inaccuracies. Accordingly, we have decided to

remove Harmonized Tariff Code 3301.29.5150 – essential oils of “other” from this implementation phase.

In the initial notice, we included both Harmonized Tariff Code 9209.92 and the 10-digit Harmonized Tariff Code 9209.92.8000. Listing the 10-digit code is unnecessary, since it already falls under 9209.92. We also mistakenly categorized Harmonized Tariff Code 9209.99.8000 as “musical instruments of heading 9202, other.” It should read simply “Other.” We have corrected these errors. An updated list of Harmonized Tariff Schedule codes is set out below. Furthermore, we have decided to delay implementation of the enforcement phase based on the comments we received. Implementation of Phase VI will now begin on October 1, 2021.

### Ch. 33 Headings (essential oils)

- 3301295109-essential oils of cedarwood
- 3301295121-essential oils of linaloe or bois de rose
- 3301295139-essential oils of sandalwood

### Ch. 42 Headings (trunks, cases, suitcases)

- 4202292000-trunks, cases, and suitcases of wood
- 4202992000-other, of wood, not lined
- 4202993000-other, of wood, lined

### Ch. 44 Headings (wood and articles of wood)

- 441012-oriented strand board (OSB)
- 4415-cases, boxes, crates, drums, containers, pallets, box-pallets, etc.

### Ch. 92 Headings (musical instruments)

- 9205902000-wind musical instruments: bagpipes
- 9205904020-clarinets
- 9205904080-other (woodwind instruments)
- 9205904060-flutes and piccolos
- 9206002000-drums
- 9207900040-musical instruments (fretted string instruments)
- 9209.92-parts and accessories for musical instruments of heading 9202
- 9209992000-parts and accessories for bagpipes
- 9209994040-parts and accessories for other woodwind instruments
- 9209998000-other

### Ch. 96 Headings (miscellaneous manufactured articles)

- 9620005500-monopods, bipods, tripods and similar articles of wood

## Additional Information

APHIS will continue to provide the latest information regarding the Lacey Act on our website, [https://www.aphis.usda.gov/aphis/ourfocus/planthealth/import-information/SA\\_Lacey\\_Act](https://www.aphis.usda.gov/aphis/ourfocus/planthealth/import-information/SA_Lacey_Act). The website currently contains the Lacey Act, as amended; a slideshow covering background and context, requirements, commodities and products covered, information on prohibitions, and the current status of implementation of the declaration requirement of the Lacey Act; frequently asked questions; the phase-in implementation plan; a link to the Lacey Act Web Governance System (LAWGS); and the paper declaration form. The website will be updated as new materials become available. We encourage persons interested in receiving timely updates on APHIS' Lacey Act efforts to register for our stakeholder registry at <https://public.govdelivery.com/accounts/USDAAPHIS/subscriber/new/> and select “Lacey Act Declaration” as a topic of interest.

## Paperwork Reduction Act

This notice contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The information collection activities included in this notice are approved by the Office of Management and Budget under control number 0579-0349.

## E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this notice, please contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851-2483.

Done in Washington, DC, this 28<sup>th</sup> day of June 2021.

**Mark Davidson,**

*Administrator,  
Animal and Plant Health Inspection Service.*

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